

INDIANA DEPARTMENT OF REVENUE

REVENUE RULING #2001-01IT

January 5, 2001

Notice: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Gross Income Tax – Limited Liability Company Electing to be Treated as a Partnership for Federal Income Taxation

Authority: Tax Policy Directive #2, 45 IAC 1.1-3-12, IC 6-2.1-3-25, IC 6-3-1-19

The taxpayer requests the Department to rule on the application of Indiana gross income tax to the gross income of a limited liability company electing to be treated as a partnership for federal income taxation.

STATEMENT OF FACTS

The taxpayer is an Illinois "C" corporation that is qualified to do business in Indiana. The taxpayer's primary business is out-bound telemarketing. Currently the taxpayer operates call centers in four Indiana communities and is contemplating opening additional call centers in Indiana.

The taxpayer is now proposing to form a wholly-owned subsidiary. Upon the subsidiary's formation, the taxpayer and the taxpayer's subsidiary propose to form a limited liability company (LLC). The taxpayer and its subsidiary would be the sole members of the LLC.

The LLC will elect to be treated as a partnership for federal income taxation. The LLC will not be a publicly traded partnership that is treated as a corporation for federal income taxation.

DISCUSSION

"Tax Policy Directive #2" provides that limited liability companies will be classified for Indiana income tax purposes in the same manner that they are classified for federal income tax purposes. Further, Rule 45 IAC 1.1-3-12, interpreting IC 6-

2.1-3-25 and IC 6-3-1-19, states that the term “partnership” for gross income taxation includes a limited liability company if it is treated as a partnership for federal income tax purposes.

Here, the LLC will be treated as a partnership for federal income tax purposes, hence, will be treated as a partnership for gross income taxation. Pursuant to IC 6-2.1-3-25, gross income received by a partnership is exempt from Indiana gross income taxation unless the gross income is received by a publicly traded partnership that is treated as a corporation for federal income tax purposes under Section 7704 of the Internal Revenue Code. The LLC will not be a publicly traded partnership, therefore, the LLC’s gross income will not be subject to Indiana gross income taxation.

RULING

The Department rules that the gross income received by the LLC (which will elect to be treated as a partnership for federal income taxation) will not be subject to Indiana gross income taxation.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer’s facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

DEPARTMENT OF STATE REVENUE